



OLR RESEARCH REPORT

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IN-STATE CONTRACTING PREFERENCES

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This report describes Connecticut laws that authorize preferences for in-state firms and residents in the awarding of state contracts. Much of the information is from the Department of Administrative Services' (DAS) *Report on In-State Preference Policy in State Procurement*, which was published in January, 2012 pursuant to [Public Act 11-229](#).

OLR Report [2012-R-0455](#) discusses possible legal constraints on in-state contracting and hiring preference laws.

SUMMARY

In-state preferential purchase laws take several different forms. In Connecticut, the law provides an in-state preference for (1) local goods and services, but only when all other factors are equal; (2) agricultural products; and (3) certain small contractors. The law also establishes a hiring preference law for public works projects. Additionally, it provides a preference for state building code knowledge and a firm's proximity to a project site when awarding construction consultant contracts.

Connecticut also has a "reciprocity" law that penalizes out-of-state firms that benefit from preferential purchasing laws in their home states. If such a firm is the low bidder for a Connecticut contract, the law potentially allows an in-state firm to match that bid.

CONNECTICUT IN-STATE PREFERENCE LAWS

Purchasing

The law requires state agencies, when purchasing goods and services, to give preference to supplies, materials, and equipment produced, assembled, or manufactured in Connecticut and services originating and provided in the state, but only when all other factors are equal ([CGS § 4a-59\(c\)](#)). Thus, the practical effect of this preference is negligible. For example, in its in-state preference report, DAS, which is the state's primary purchasing agency, reported using this preference only twice from 1998-2011.

The law also requires DAS, when purchasing dairy products, poultry, eggs, fruits, or vegetables, to give preference to those products grown or produced in Connecticut if they are comparable in cost to those grown or produced outside the state ([CGS § 4a-51\(b\)](#)). DAS reported purchasing 5,293 cases of such produce in FY 10.

Project Workforce

State law establishes a preference for hiring in-state workers for state construction projects. By law, firms (1) must make every reasonable effort to hire in-state workers as mechanics, laborers, and workmen and (2) cannot knowingly employ nonresidents if qualified residents are reasonably available. The law subjects firms to a \$200 per week fine for each week they violate this requirement. This provision does not apply in cases where the preference would cause the state to lose federal revenue ([CGS §§ 31-52 to -52b](#)). For example, it would not apply to most major transportation projects (such as highway and bridge construction), as these are often funded at least in part by federal revenue.

Supplier Diversity Program

The supplier diversity program (referred to in statute as the set-aside program) functions as an in-state preference program because, to be eligible for the program, a firm must have its principal place of business in Connecticut. Under the program, state agencies and political subdivisions, other than municipalities, must set aside 25% of the total value of all contracts they let for construction, goods, and services each year for exclusive bidding by certified small contractors. A small contractor is a contractor, subcontractor, manufacturer, service company, or nonprofit corporation that (1) maintains its principal place of business in Connecticut and (2) grossed revenues of \$15 million or less during its most recent fiscal year.

The agencies must further reserve 25% of the set-aside value (6.25% of the total) for exclusive bidding by certified minority business enterprises, which are small contractors owned by women, minorities, or people with disabilities ([CGS § 4a-60g](#)).

CONSTRUCTION CONSULTANT CONTRACTS

The law requires the Department of Construction Services (DCS) to consider a consultant's (1) knowledge of Connecticut's building and fire codes and (2) geographic location (i.e., proximity to the project site) when selecting the most qualified firms for state projects that require architectural or professional engineering services ([CGS § 4b-57\(b\)](#)). While this is not an explicit in-state preference, the provision may be advantageous to in-state firms seeking construction consultant contracts.

In practice, if a firm has a key personnel member with a Connecticut building official license, DCS awards the firm "CT Code Expertise" points when scoring its application. If that staff member also demonstrates substantial working knowledge of Connecticut state codes in relationship to the scope of the contract, DCS awards the firm additional "CT Code Expertise" points.

DCS awards site proximity points to a firm if its headquarters is located within 60 miles of the project site. UConn also awards site proximity points for construction consultant contracts, but uses a 100 mile radius to determine a firm's eligibility. Thus, these radii typically capture firms in surrounding states in addition to Connecticut firms.

RECIPROCITY

Reciprocity laws typically penalize out-of-state firms that receive a preference in their home states, often by an amount equal to the home state's preference. According to the DAS in-state preference report, at least 32 states, including Connecticut, have reciprocity laws.

Under Connecticut's reciprocity law, state contracting agencies must increase bids submitted by out-of-state businesses by a percentage equal to any preference those businesses receive in their home states. If the increase results in an in-state business becoming the lowest responsible qualified bidder, the agency must award the contract to the in-state business if that business agrees, in writing, to meet the original lowest responsible qualified bid. The in-state business must make the agreement within 72 hours after receiving notice from the agency ([CGS § 4e-48](#)).

For example, if another state has a 5% preference for in-state firms, then any Connecticut bid by a firm from that state would be increased by 5%. If that increase raised the bid above a Connecticut firm's bid, then the Connecticut firm would have an opportunity to match the out-of-state firm's original bid. But if (1) the other state does not have a preferential purchasing law or (2) the percentage increase did not raise the bid above what the Connecticut firm had bid, then the Connecticut firm would not have an opportunity to match.

Out-of-state businesses are those that do not have a business address in Connecticut or did not pay state unemployment or income taxes during the calendar year preceding the bid date. In-state businesses, in addition to paying these taxes and maintaining an in-state address, must affirmatively assert their in-state status on bid submissions.

DAS reports that this preference has been used minimally, mainly because actual bid results have produced few situations where it could be invoked.

The law requires the State Contracting Standards Board to annually publish a list of other states' preference laws for state contracting agencies to rely on in administering the reciprocity law. However, the board is not operational and, thus, has not published such a list.

ADDITIONAL RESOURCES

Department of Administrative Services: *Report on In-State Preference Policy in State Procurement*
<http://das.ct.gov/images/1090/In%20state%20Preference%20report%202012.pdf>

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